

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

KEITH C. TOLBERT,
Plaintiff,

v.

**PENNSYLVANIA DEPARTMENT
OF CORRECTIONS, *et al.***
Defendants.

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No. 22-cv-1182

ORDER

AND NOW, this 4th day of April, 2022, upon consideration of Plaintiff Keith C. Tolbert's Motion to Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 3), and *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Keith C. Tolbert, #LZ-4998, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Somerset or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Tolbert's inmate account; or (b) the average monthly balance in Tolbert's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Tolbert's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Tolbert's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Superintendent of SCI Somerset.

4. The Complaint is **DEEMED** filed.

5. For the reasons stated in the Court's Memorandum, Tolbert's § 1983 claims against the Pennsylvania Department of Corrections, his due process claims against Defendants Superintendent Kevin Sorber, Deputy Bradley, and Lt. Morgan, and his claims seeking transfer to a different prison are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

6. For the reasons stated in the Court's Memorandum, Tolbert's excessive force claim against Defendant Sgt. Eskew and his equal protection claims against Defendants Dr. Stephen Wiener and Deputy Mandy Sipple are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

7. The Clerk of Court is **DIRECTED** to terminate the Pennsylvania Department of Corrections and Superintendent Kevin Sorber, Deputy Bradley, and Lt. Morgan as defendants.

8. The Clerk of Court is **DIRECTED** to send Tolbert a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.¹

9. Tolbert is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible excessive force claim against Defendant Sgt. Eskew and plausible equal protection claims against Defendants Dr. Stephen Wiener and Deputy Mandy Sipple. Any amended complaint shall identify all defendants in the caption of the amended

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.

complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Tolbert's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 22-1182. **If Tolbert files an amended complaint, his amended complaint must be a complete document that includes all of the bases for Tolbert's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. Claims that are not included in the amended complaint will not be considered part of this case.** When drafting his amended complaint, Tolbert should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

10. If Tolbert does not file an amended complaint the Court will direct service of his initial Complaint on Defendant Correctional Officer Baldwin only. Tolbert may also notify the Court that he seeks to proceed on this claim rather than file an amended complaint. If he files such a notice, Tolbert is reminded to include the case number for this case, 22-1182.

11. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.
United States District Judge